

HR Weekly Podcast

July 18, 2007

Today is July 18, 2007, and welcome to the HR Weekly Podcast from the State Office of Human Resources. Today's topic relates to a recent South Carolina Supreme Court opinion concerning the release of information about candidates for an employment position.

This week, the South Carolina Supreme Court issued an opinion in New York Times Co. v. Spartanburg County School District No. 7. In that opinion, the Supreme Court affirmed the decision of the Circuit Court, finding that the Spartanburg County School District violated a statute contained in the Freedom of Information Act, or the FOIA. The School District's violation resulted from disclosing information pursuant to an FOIA request relating only to two applicants the School District determined were finalists for an employment position. In addition, the Supreme Court determined that the School District was liable for attorney's fees and costs to the New York Times Co., regardless of whether it was acting in good faith based on its understanding of the statute.

The challenged statute provides that:

A public body may but is not required to exempt from disclosure the following information[:]...All materials, regardless of form, gathered by a public body during a search to fill an employment position, except that materials relating to not fewer than the final three applicants under consideration for a position must be made available for public inspection and copying.

The Supreme Court rejected the School District's contention that this statutory language mandates FOIA disclosure of only applicants deemed finalists for a position regardless of whether that number is less than three. Instead, the Supreme Court held:

The fact that a public employer has to disclose information regarding an employment search does not in any way force the employer to officially name three finalists. The statute simply requires a public employer to disclose material relating to a larger group of applicants if it chooses to name one or two "finalists." Construing [the challenged statute] as urged by [the School District] would allow public employers to avoid disclosure by naming only one or two "finalists." We will reject a statutory interpretation that leads to a result so plainly absurd that it could not have been intended by the legislature or would defeat the plain legislative intention....

Consequently, based on this new opinion, OHR urges that a public sector employer that reduces its number of finalists for a position to only one or two candidates cannot conclude that those are the only candidates that are subject to disclosure under the FOIA. Instead, the Supreme Court stated that "[t]he term 'final' in [the challenged statute] refers to the last group of applicants, with at least three members, from which the employment selection is made."

If you have questions concerning this application of the FOIA, please contact your consultant at 737-0900.

Thank you.